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No. 94-771

In The

Supreme Court of the United States

October Term, 1994

OKLAHOMA TAX COMMISSION,

Petitioner,

v.

CHICKASAW NATION,

Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Tenth Circuit

SUPPLEMENTAL BRIEF OF RESPONDENT

BOB RABON*
Rabon, Wolf & Rabon
402 East Jackson St.
P.O. Box 726
Hugo, OK 74743
(405) 326-6427

DENNIS W. ARROW
Oklahoma City University
School of Law
2501 N. Blackwelder
Oklahoma City, OK 73106
(405) 521-5179

*Counsel of Record

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SUPPLEMENTAL BRIEF OF RESPONDENT

In an appendix to its brief, see Resp. Br. 1a-23a, Respondent Chickasaw Nation reproduced the text of legislation then pending before the Oklahoma legislature[1] which would have placed the legal incidence of the state's motor fuel tax on consumers. Noting that effect, Resp. Br. 11, and maintaining that in consequence, adoption of that legislation would moot the first two questions presented by Petitioner Tax Commission (with the exception of any issue concerning Indian-country sales by the Tribe to tribal members), *id.* at 12 & n.12, the Chickasaw Nation suggested that should that legislation be adopted, dismissal of the Writ as improvidently granted might be an appropriate course of conduct, *id.* at 10-13, 49.

As of the date set for filing of the Chickasaw Nation's brief (March 27, 1995), the legislation discussed above had been adopted by the Oklahoma House of Representatives, and was pending before the Oklahoma Senate. But on March 29, 1995, that legislation was defeated before the Senate Rules Committee. Thus, it would be literally accurate to represent to this Court that *that* legislation has now been finally defeated and will not be enacted during the Oklahoma legislature's 1995 legislative session. But such a representation would incompletely describe the current situation in material respect.

As this Court may be aware, Oklahoma's legislative process, like the processes of some other states, permits

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[1] Committee Substitute for H.B. 1522, 45th Okla. Leg., 1st Sess. (1995).

the introduction of "blank" or "shell bills," whose purpose is to allow the "opening up" of a particular title of *Oklahoma Statutes* for possible last-minute amendment. Such a bill currently exists with regard to Title 68 of *Oklahoma Statutes*, which is the title containing the state's fuel-tax provisions. S.B. 574, 45th Okla. Leg., 1st Sess. (1995). Thus, as of April 17, 1995, Title 68 remains "open" to possible late amendment, including amendment of the type proposed in the legislation reproduced in the appendix to the Chickasaw Nation's brief-in-chief.

So as to be able to present this Court with the most up-to-date information concerning relevant developments before the Oklahoma legislature, Respondent Chickasaw Nation, having monitored such developments during the nineteen days following the defeat of H.B. 1522 before the Oklahoma Senate, has deferred to filing of this supplemental brief until one week prior to oral argument.[2] The Chickasaw Nation will continue to monitor legislative developments during the week of April 17-24, and in the event that Petitioner Tax Commission does not address the matter during its oral argument, will, with this Court's permission, report on such developments during the Chickasaw Nation's allotted oral-argument time.

It should be noted that by rule, the 1995 Oklahoma legislature has established May 3, 1995, as the deadline date for the filing of conference committee reports, and

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[2] In order to provide maximum notice to Petitioner Tax Commission, in addition to mailing of the "service" copy, a duplicate copy of this supplemental brief is being sent by overnight delivery to counsel of record for Petitioner.

May 19, 1995 as its adjournment date. The Oklahoma Constitution requires the legislature to adjourn *sine die* no later than 5:00 p.m. on May 26, 1995. *See* OKLA. CONST. art. 5, § 26. With this Court's permission, see SUP. CT. R. 25.5, the Chickasaw Nation will report to this Court concerning relevant legislative developments which occur after oral argument herein.

Respectfully submitted,

BOB RABON*
Rabon, Wolf & Rabon
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P.O. Box 726
Hugo, OK 74743
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DENNIS W. ARROW
Oklahoma City University
School of Law
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